

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of MONIQUE TYRA HOLLIMAN,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TIMOTHY HOLLIMAN,

Respondent-Appellant.

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UNPUBLISHED

April 30, 2009

No. 286793

Wayne Circuit Court

Family Division

LC No. 05-445150

Before: Beckering, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err when it found that clear and convincing evidence established the statutory grounds for termination of respondent's parental rights. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). This Court reviews the trial court's termination decision for clear error. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

The original permanent custody petition filed in August 2005 included an allegation that respondent had been convicted in 1997 for drug possession.<sup>1</sup> At the initial disposition, respondent admitted that a drug screen would test positive for marijuana, and the court instructed him to refrain from both drugs and alcohol, complete a substance abuse program, and provide weekly drug screens. However, by November 2006, when the second petition seeking

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<sup>1</sup> On November 19, 2002, a circuit court found that respondent was the minor child's father by default and ordered respondent to pay child support of \$55 per week, which grew in arrearages to over \$7,500. The minor child resided with her mother. On August 11, 2005, the minor child's mother was stabbed to death by respondent's stepbrother, who had also fathered a child with, and later married, the minor child's mother. Upon the death of her mother, the minor child was placed with her maternal grandmother and the DHS filed an original permanent custody petition seeking termination of respondent's parental rights.

permanent custody was filed, respondent was noncompliant with his substance abuse treatment and weekly screens, had smelled of alcohol during several substance abuse counseling sessions, and had not been able to remain sober. In February 2007, respondent entered an inpatient substance abuse program, where he made a lot of progress. However, his sobriety after his August 2007 discharge from that program was unclear. He missed many screens, and one screen was positive for opiates, but during one period he provided ten out of 15 requested screens and all were negative for substances. The other five are unknown and should not be credited. Unfortunately, in March and April 2008, he provided three screens that were positive for alcohol. In addition, despite his claims that he was involved in an aftercare program through the Salvation Army, where he was employed, respondent failed to provide verification of that claim or of his attendance at Alcoholics Anonymous/Narcotics Anonymous (“AA/NA”) meetings. Furthermore, it was reported that he had attended visitations while under the influence. Based on this evidence, the trial court did not clearly err when it found that the adjudicating condition of substance abuse still existed, and that there was no reasonable likelihood that this problem would be rectified within a reasonable time considering the child’s age. MCL 712A.19b(3)(c)(i).

The court also did not clearly err when it ordered termination pursuant to MCL 712A.19b(3)(g). There was conflicting evidence regarding whether respondent had maintained a relationship with the child after his relationship with the child’s mother ended, but his significant child support arrearages established his past failure to financially support the child. During the nearly three-year protective proceeding, respondent did not progress far enough with respect to his substance abuse and other problems to advance to unsupervised visitations with the child. Respondent indicated he needed two more years in which to plan for the child and he never amended that assessment, even when told that the law required permanency within one year. Respondent also failed to attend the third contested hearing on permanent custody. Therefore, the evidence sufficiently established respondent’s past failure to provide for the child and the lack of a reasonable expectation that he would be able to provide proper care for the child within a reasonable time considering the child’s age.

Finally, respondent’s ongoing substance abuse and inability to care for the child provided clear and convincing evidence that there was a reasonable likelihood that the child would be harmed if returned to respondent’s home. MCL 712A.19b(3)(j).

Respondent argues that the Department of Human Services (“DHS”) became frustrated with respondent and “rushed” to terminate his rights. In making this argument, respondent likens his situation to that of the respondents in *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991). Respondent’s argument fails since *Newman* is factually distinguishable from this case. In *Newman*, the service provider assigned to instruct the respondents on maintaining their home stopped providing the instruction. *Id.* at 65-68. In this case, evidence was presented that DHS did not have an aftercare component for substance abuse but had provided instructions to respondent on how to get to AA/NA meetings. Furthermore, respondent represented to DHS that he was sober, in contact with his inpatient worker, participating in aftercare through the Salvation Army, and in the process of securing AA meetings. These representations, along with the fact that respondent provided ten negative screens (out of 15 requested screens) from December 4, 2007 through March 4, 2008, clearly and convincingly establish that DHS acted reasonably when it did not refer respondent for additional substance abuse treatment. In addition, respondent’s claim that there was a rush to terminate his parental rights is without

merit. The Juvenile Code, MCL 712A.1 *et seq.*, has been amended since the *Newman* decision in an attempt to prevent children from being placed in out-of-home care for unnecessarily extended periods of time. *In re Trejo*, 462 Mich 341, 350-351 and n 8; 612 NW2d 407 (2000). The policy preference for timely decisions regarding a child's permanency plan is driven by a concern for the child's needs. See *In re Hatcher*, 443 Mich 426, 431 n 5; 505 NW2d 834 (1993). By the time the court terminated respondent's parental rights after the third contested hearing held in June 2008, the protective proceeding had lasted almost three years, during which time respondent had been provided ample opportunities to improve his parenting capabilities.

Once there is clear and convincing evidence of at least one statutory ground for termination, the trial court "must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *Trejo*, *supra* at 354, citing MCL 712A.19b(5).<sup>2</sup> The evidence showed that, after the nearly three-year protective proceeding, respondent still suffered from substance abuse, remained unable to assume care of the child, and estimated it would take him two years before he got his life together and could care for the child. In addition, there was not a strong father/daughter bond between respondent and the child. The child was nearly eight years old and had been in care with her maternal grandmother and siblings for almost three years. She deserved permanency and stability in her life. As such, the court did not err in its best interests determination.

Affirmed.

/s/ Jane M. Beckering

/s/ Michael J. Talbot

/s/ Pat M. Donofrio

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<sup>2</sup> This version of MCL 712A.19b(5) governed during the June 27, 2008 termination trial and at the time the court entered its July 2, 2008 termination order, since the amended version of the statute did not take effect until July 11, 2008.